



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, TX 75424

501.03-00

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: 8/24/2011

Number: **201146021**
Release Date: 11/18/2011

LEGEND

ORG - Organization name
XX - Date Address - address

Person to Contact:
Identification Number:
In Reply Refer to: TEGE:EO:7909
EIN:

**ORG
ADDRESS**

CERTIFIED MAIL – Return Receipt Requested

Dear :

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective January 1, 20XX.

Our adverse determination was made for the following reasons:

Organizations described in I.R.C. § 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You have failed to produce documents or otherwise establish that you are operated exclusively for exempt purposes and that no part of your net earnings inures to the benefit of private shareholders or individuals. You failed to respond to repeated reasonable requests to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, or activities as required by I.R.C. § 6001, 6033(a)(1) and Rev. Rul. 59-95, 1959-1 C.B. 627.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, 20XX, and for all years thereafter.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers.

You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling, Tel: (213) 576-3140, or write:

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Nanette M. Downing
Director, EO Examinations

Enclosures:

Publication 892
Form 6018, Consent to Proposed Adverse Action
Envelope

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
625 Fulton Street – 5th Floor
Brooklyn, NY 11201

Department of the Treasury

Date: June 27, 2011

ORG
ADDRESS

Taxpayer Identification Number:
Form:
Tax Year(s) Ended:
Person to Contact/ID Number:
Contact Numbers:
Telephone:
Fax:

Certified Mail – Return Receipt Requested

Dear :

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for

the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended	
ORG	EIN	December 31, 20XX	

LEGEND

ORG - Organization name XX - Date State - state RA-1 - 1st RA
website - website DIR-1 & DIR-2 - 1st & 2nd DIR

Issue:

Whether ORG should maintain its exemption under Section 501(c)(3) of the Internal Revenue Code after failing to observe the conditions of its exemption in terms of not operating exclusively for exempt purposes granted under Section 501(c)(3) of the Internal Revenue Code.

Whether the ORG should maintain its exemption under Section 501(c)(3) of the Internal Revenue Code after failing to respond to numerous requests from the Internal Revenue Service to examine the books, records and activities of the organization?

Whether the ORG should maintain its exempt status after failing to observe the conditions of its exemption in terms of not filing a Form 990 for the December 31, 20XX tax year or providing a reason as to why no return was filed?

Facts:

ORG was granted exemption from Federal income tax under Internal Revenue Code section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). According to its organizational documents, its primary purpose is to solicit and obtain money or property by gift, bequest or devise. to invest or reinvest the same, and to apply the income and the principal thereof, as the Board of Directors may from time to time determine, either directly or through contributions to any charitable organization or organizations, exclusively for charitable, scientific or educational purposes, and to engage in any all lawful activities incidental thereto except as restricted herein, including, without limiting the generality of the foregoing to inform the public about the problems of and reasons for homelessness, to raise funds and to provide financial assistance and expertise to individuals and organizations providing shelter, care and assistance to homeless men and women in the State of State, provided, however, that nothing herein shall be construed as authorizing the corporation to undertake or carry on any of the activities set fourth in paragraph (b) through (v) of section 404 of the Not-for-Profit Corporation Law or Section 460-a of the Social Services Law of the State of State.

The following is a list of the dates in which correspondence was mailed to the ORG in an attempt to secure an appointment to examine the books, records and activities for the year ending December 31, 20XX.

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May 7, 20XX Letter 3611
June 7, 20XX Letter 1701
August 20, 20XX Letter 1701
February 2, 20XX Letter 1701
March 8, 20XX Letter 3611

In addition to the correspondence telephone calls were also made in attempt to schedule an examination. The taxpayer would not comply with these requests to schedule an examination.

As the facts listed below were alleged in the complaint filed by the State of State Office of the Attorney General's Office filed with the Supreme Court of the State of State, County of State regarding RA-1, Attorney General of the State of State, for and on behalf of the People of the State of State against ORG, DIR-1 and DIR-2.

- Each day on the streets of State City, ORG table workers convince sympathetic passersby to deposit cash into plastic jugs under the false pretense that their hard earned money is going to a bona fide charity that funds services for the homeless. ORG is a sham. All of the money dropped into the ORG jugs is pocketed by the ORG table workers, DIR-1, DIR-2, and other insiders, or is used by DIR-1 & DIR-2 to perpetuate a scheme to defraud the public.
- As President, DIR-1 hides behind ORG's facade of corporate legitimacy and describes ORG table workers as "members" of ORG. Donning ORG-branded hats, identification badges, aprons, and other paraphernalia, ORG table workers mislead the public that donated funds will be used for services for the homeless.
- Although assets of ORG, DIR-1 & DIR-2 treat the "fees" as their personal kitty, dipping into them whenever they choose. In effect DIR-1 & DIR-2 have co-opted a tax exempt, charitable corporate structure for their own personal benefit.

Facts developed by newspaper articles listed below:

1. Article dated June 14 – Jul 3, 20XX from Time Out State: "I, State". 1 – Page
2. Article dated December 7, 20XX from the State Post "'Jug Band' Keeps you change homeless 'aid' just a beg lie". 1 - Page
3. Article dated November 24, 20XX from Website: "Homeless Organization is called a Fraud. 2 - Pages
4. Article dated November 25, 20XX, from Website: "Lowest scam in town: ORG fakes helping the poorest". 1 – Page,
5. Information retrieved from the internet via Wikipedia, referencing the ORG. 1 - Page

Articles state that the ORG claims to collect money for the homeless but pockets the funds for themselves. ORG which claims to collect money for the homeless in an elaborate fraud.

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LAW

IRC Section 501(c)(3) provides tax exemption for corporations and foundations that are operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that in order to be exempt as an organization described in § 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treasury Regulation Section 1.501(c)(3)-1(c)(1) states that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in § 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treasury Regulation Section 1.501(c)(3)-1(d)(1)(ii) assigns the burden of proof to an applicant organization to show that it serves a public rather than a private interest and specifically that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Treasury Regulation Section 1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes the relief of the poor and distressed or of the under privileged as well as the advancement of education.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purposes, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

Treas. Reg. § 1.6001-1(e) states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Treas. Reg. § 1.6033-1(h)(2) provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to

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administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and IRC § 6033.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of IRC § 6033 and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

In accordance with the above cited provisions of the Code and regulations under IRC §§ 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

TAXPAYER'S POSITION

Despite several attempts made to contact the ORG as stated above the EO failed to comply.

GOVERNMENT'S POSITION

As stated in Treasury Regulation Section 1.501(c)(3)-1(c)(1), "an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3)."

In Revenue Ruling 77-366 the organization accomplished both charitable and noncharitable purposes but lost its exemption because it was not operating exclusively for exempt purposes. In this case, ORG does not accomplish any exempt purposes and therefore is found not operating exclusively for exempt purposes.

Further, in Better Business Bureau of Washington D.C., Inc. v. United States, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. Again, ORG does not accomplish any exempt purposes and therefore is not operating exclusively for exempt purposes.

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CONCLUSION

Based on our review of all facts and circumstances and the legislative support referenced above, it is the government's position that this organization's exempt status should be revoked due to its failure to operate exclusively for exempt purpose(s) as required by I.R.C. Section 501(c)(3).

It is the IRS's position that the ORG failed to meet the reporting requirements under IRC §§ 6001 and 6033 to be recognized as exempt from federal income tax under IRC § 501(c)(3). Additionally, it is also the position of the IRS that the ORG. failed to cooperate with the Service in scheduling an examination of their books, records and activities as required in the aforementioned statutes. Accordingly, the organization's exempt status is revoked effective January 1, 20XX.

Accordingly, the organization's exempt status is revoked effective January 1, 20XX.

Form 1120, US Corporation Income Tax Return, should be filed for the tax periods ending on and after January 1, 20XX.